

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**DEPARTMENT OF SOCIAL
SERVICES, MO HEALTHNET
DIVISION, AND DEPARTMENT OF
HEALTH AND SENIOR SERVICES**

APPELLANTS,

**v.
PEACE OF MIND ADULT DAY
CARE CENTER**

RESPONDENT.

DOCKET NUMBER WD74519
DATE: September 25, 2012

Appeal From:

Cole County Circuit Court
The Honorable Jon E. Beetem, Judge

Appellate Judges:

Division Three: Victor C. Howard, Presiding Judge, Karen King Mitchell, Judge and Cynthia L. Martin, Judge

Attorneys:

Matthew J. Laudano, Jefferson City, MO, for appellants.

Harvey M. Tettlebaum and Barbara L. Miltenberger, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**DEPARTMENT OF SOCIAL
SERVICES, MO HEALTHNET
DIVISION, AND DEPARTMENT OF
HEALTH AND SENIOR SERVICES,**

APPELLANTS,

**v.
PEACE OF MIND ADULT DAY
CARE CENTER,**

RESPONDENT.

No. WD74519

Cole County

Before Division Three: Victor C. Howard, Presiding Judge, Karen King Mitchell, Judge and Cynthia L. Martin, Judge

Stephanie Patton ("Patton") owned and operated Peace of Mind Adult Day Care Center ("Peace of Mind"). The Missouri Department of Health and Senior Services ("DHSS") revoked Peace of Mind's participation agreement and license to operate an adult day care. The Missouri Department of Social Services ("DSS") imposed MO HealthNet sanctions on Peace of Mind for failing to produce records. Peace of Mind and Patton appealed the Departments' decisions to the Administrative Hearing Commission ("AHC"). After a hearing, the AHC entered a decision holding that Peace of Mind is not subject to MO HealthNet sanctions, that Peace of Mind is entitled to a participation agreement with DHSS for home- and community-based care, and that Patton is entitled to a payment of \$45,340 for adult day care services rendered from December 20, 2008, through February 20, 2009. The AHC also held that DHSS acted with racially discriminatory animus toward Patton in violation of her due process rights.

The Departments appeal.

AFFIRMED IN PART & REVERSED IN PART.

Division Three holds:

(1) We need not determine whether Patton's testimony at the hearing before the AHC was sufficient to raise and preserve her claim that her due process rights were violated by a DHSS employee's conduct when no other evidence suggested that the claim had previously been brought to DHSS's attention. The AHC's conclusion that DHSS, as an agency, acted with discriminatory racial animus based on an employee's abhorrent but isolated conduct was legally erroneous. There was no evidence presented at the hearing from which the AHC could have concluded that the employee's statement could be legally attributed to DHSS, and there was no evidence presented from which the AHC could have concluded that the employee's abhorrent

conduct played any role in DHSS's subsequent administrative decisions from which Patton sought relief.

(2) The Departments argue that the AHC's decision is not supported by competent and substantial evidence on the record as a whole because the AHC decision failed to account for contrary evidence in the record. This point relied on materially fails to comply with Rule 84.04 in that it does not identify any specific findings by the AHC that the Departments challenge. As a result, the factual findings raised in the argument portion of the Departments' brief will not be afforded appellate review.

(3) The AHC found that Peace of Mind committed two violations that could serve as a basis for sanctions and, exercising its discretion, concluded that Peace of Mind was not subject to sanctions. DSS's argument that the AHC should have found three additional violations is irrelevant as DSS does not demonstrate that the additional bases would have been material to the AHC's exercise of discretion not to impose sanctions.

(4) Because the AHC's function is to render the decision of the agency, the AHC had the same discretion to impose sanctions against Peace of Mind as DSS. The AHC did not abuse its discretion in making its decision not to impose sanctions.

(5) A fair reading of the DHSS participation agreement, including the statutes and regulations cited therein, does not permit the conclusion that a MO HealthNet provider agreement is a condition precedent for a DHSS participation agreement. Even if the DHSS participation agreement, statutes, or regulations required Peace of Mind to have a MO HealthNet provider agreement as a condition precedent to having a participation agreement, the participation agreement should not have been terminated as the AHC concluded that Peace of Mind's status as a MO HealthNet provider should not have been terminated.

Opinion by Cynthia L. Martin, Judge

September 25, 2012

| |
|---|
| This summary is UNOFFICIAL and should not be quoted or cited. |
|---|